

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Mike Xiaoli MA

Application No. 10/525,143

Filed: **February 16, 2005**For: **TWIST-OPEN CLOSURE HAVING
INCLINED FRANGIBLE
MEMBRANE**Art Unit: ***To be assigned***Examiner: ***To be assigned***Docket No.: **33508/US/1/RBC/VEJ**Certificate of Mail (37 C.F.R. § 1.8(a))

I hereby certify that this paper (along with any referred to as being attached or enclosed) is being deposited with the United States Postal service on the date shown below with sufficient postage as first class mail in an envelope addressed to Mail Stop PCT, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on July 14, 2005.



Patricia A. Diehl

Mail Stop PCT
Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450

07/20/2005 LLANDGRA 00000081 502319 10525143

01 FC:1464 130.00 DA

Sir:

***PETITION TO MAKE SPECIAL
ACCELERATED EXAMINATION***

Applicant hereby respectfully Petition the Commissioner to make the above-captioned new application special under M.P.E.P. § 708.02 VIII and 37 CFR § 1.102 (d).

Fees - M.P.E.P. § 708.02 VIII (A)

The Commissioner is hereby authorized to charge the accompanying fee of \$130.00 as set forth in 37 C.F.R. § 1.17(h) to Deposit Account No. 50-2319 (Order No. 463678-00253; Docket No. 33508/US/2/RBC/VEJ).

Claims - M.P.E.P. § 708.02 VIII (B)

Submitted herewith is a PRELIMINARY AMENDMENT in which all claims are directed to a singled invention. In particular, there is one independent claim, and all remaining claims depend therefrom. Claim 1, the only independent claim, calls for:

A closure for a container having an opening, said container comprising:
a base cap including an outer skirt having *internal container-engaging structure*, a cylindrical well *for containing a consumable*, a frangible membrane connected to said well along an *inclined line of weakness* and by a hinge member within said well, said hinge member having a pocket extending downward adjacent lower and upper terminuses of said line of weakness; and
an overcap including a body having gripping structure, an inner skirt received within and rotatably connected to said well, and a cutting member depending from a lower end of said inner skirt received within said pocket such that said cutting member extends below said lower terminus, whereby said cutting member severs said line of weakness upon substantial rotation of said overcap with respect to said base cap;
wherein said base cap includes an annular groove and said overcap includes a locking structure rotatably received within said groove to axially limit said overcap with respect to said base cap.

Search - M.P.E.P. § 708.02 VIII (C)

A pre-examination search has been made including, *inter alia*: class 215/subclass Dig. 8; class 222/subclasses 525, 521, 80, 83, 83.5, 541.2 and 541.6; and class 206/subclass 222. Text searching was also conducted on the U.S. Patent and Trademark Office EAST database system. The pre-examination search was directed to the invention as claimed in the present application. All references uncovered during the pre-examination search are listed on the accompanying INFORMATION DISCLOSURE STATEMENT (“IDS”).

References - M.P.E.P. § 708.02 VIII (D)

One copy each of the references deemed most closely related to the subject matter encompassed by the claims, which references are discussed in detail below, is submitted herewith with the above mentioned IDS.

Detailed Discussion - M.P.E.P. § 708.02 VIII (E)

The following is a detailed discussion of the most closely related references as to how the claimed subject matter is patentable over the references. The discussion particularly points out how the claimed subject matter is distinguishable over the references.

1. U.S. Patent No. 3,207,375 to Bereziat et al.

In one embodiment, the Bereziat patent discloses a closure assembly for containers which includes a pouring spout supported by a capsule 1 having an oblique wall 3, and includes a cap 7 having a blade 9. In another embodiment, the Bereziat patent discloses a capsule 1d having a ramp portion 34. Bereziat discloses neither a base cap having a well for a consumable nor an overcap having an inner skirt received within the well. Furthermore, Bereziat discloses neither a well for a consumable nor a sealing membrane that is opened to release a consumable. Thus, Bereziat fails to disclose the presently claimed invention.

2. U.S. Patent No. 6,840,373 B2 to Gibler et al.

The Gibler patent discloses a beverage storage and discharge cap assembly having outer and inner cylindrical housings 12 and 40. When twisted, inner cylindrical housing 40 moves axially downward against flat bottom wall 32 to open the same. Gibler not only fails to disclose an inclined membrane and a cutting member, but also fails to disclose an overcap that is rotatable but axially limited with respect to a base cap.

3. U.S. Patent Application Publication No. 2003/0132244 A1 to Birkmayer et al.

The Birkmayer publication discloses a twist closure means for a container including a supply container 4 fixed within a specially modified container wall 66, and including a screw cap 2 that is threaded to the supply container via threads 16 and 68. As one turns screw cap 2, it axially advances downward and cuts through supply container bottom 32. Thus, Birkmayer fails to disclose an overcap that is rotatable but axially limited with respect to a base cap.

4. International Patent Publication No. WO 01/08996 A1 to Yu

The Yu publication discloses a spin-opening type bottle cap for separating solute and solvent including a top cover 10 that is threaded to a low cover 20 via threads 14 and 25. As one turns top cover 10, it advances downward and cuts through bottom sealing sheet 22. Thus, Yu fails to disclose an overcap that is rotatable but axially limited with respect to a base cap.

5. U.S. Patent Application Publication No. 2002/0066748 to Weiler et al.

The Weiler publication discloses a hermetically sealed container with a medicament storing and dispensing insert which in one embodiment includes a “push plunger” and another embodiment includes a “screw plunger”. FIGS. 2-5 disclose the “push plunger” embodiment in which a plunger 90 which is simply pushed axially downward within base member 54 to push through and open membrane 76. FIGS. 6 and 7 disclose a “screw plunger” embodiment in which plungers 290 are threaded to base members 254 via threads 295, 297. As one turns plunger 290, it advances downward and through membrane 276. FIG. 8 discloses another “screw plunger” embodiment similar to that shown in FIGS. 6 and 7. As all embodiments disclose a plunger that moves axially with respect to the base member, Weiler fails to disclose an overcap that is rotatable but axially limited with respect to a base cap.

6. Other “Push-Plunger” Caps

A number of references disclose closures, similar to those shown in the above-mentioned FIGS. 2-5 of Weiler, having a first component that is axially received within a second component having a membrane or seal. The following references disclose such components in which simply pushing the first component into the second component plunges it through the membrane or seal:

- U.S. Patent No. 3,156,369 to Bowes et al.;
- U.S. Patent No. 3,840,136 to Lanfranconi et al.;
- U.S. Patent No. 4,195,731 to Cavazza;
- U.S. Patent No. 4,221,291 to Hunt;
- U.S. Patent No. 4,884,705 to Debetencourt;
- U.S. Patent No. 5,038,951 to Rizzardi et al.;
- U.S. Patent No. 5,292,025 to Dubreul;
- U.S. Patent No. 5,927,549 to Wood;
- U.S. Patent No. 6,116,445 to Ikemori et al.;
- U.S. Patent No. 6,148,996 to Morini;
- U.S. Patent No. 6,230,884 B1 to Coory;
- U.S. Patent No. 6,367,622 B1 to Hsu;

U.S. Patent No. 6,477,743 B1 to Gross et al.;
U.S. Patent No. 6,513,650 B2 to Mollstam et al.;
U.S. Patent No. 6,679,375 B1 to Coory;
U.S. Patent No. 6,705,462 B2 to Kasuya;
U.S. Patent No. 6,766,903 B1 to Yehhsu;
U.S. Patent No. 6,769,539 B2 to Stern et al.;
U.S. Patent No. 6,786,330 B2 to Mollstam et al.;
U.S. Patent Application Publication No. 2002/0096440 A1 to Kasuya;
U.S. Patent Application Publication No. 2002/0030056 A1 to Hsu; and
International Patent Publication No. WO 98/38104 A1 to Morini et al.

As each of the above references disclose a plunger that moves axially with respect to a base member, the above references fail to disclose an overcap that is rotatable but axially limited with respect to a base cap.

7. Other "Screw-Plunger" Caps

The following references disclose closures, similar to those illustrated in the above-mentioned FIGS. 6-8 of Weiler, having a first component that is threaded within a second component having a membrane or seal. The following references disclose such components in which turning the first relative to the second causes the first to advances downward and plunge through the membrane or seal:

U.S. Patent No. 5,170,888 to Goncalves;
U.S. Patent No. 6,105,760 to Mollstam et al.;
U.S. Patent No. 6,209,718 B1 to Mollstam et al.;
U.S. Patent No. 6,454,088 B2 to Mollstam et al.; and
European Patent Publication No. EP 0 552 105 A1 to Deslandes.

As each of the above references disclose a plunger that moves axially with respect to a base member, they fail to disclose an overcap that is rotatable but axially limited with respect to a base cap.

8. *"Axially Movable Stem" Caps*

Several references disclose a cap which has a axially-movable stem 36 that is operably connected to a cap 31 and a spout 32. The following references disclose such axially-movable stem configurations in which the stem advances axially downward into a seal member 81 upon rotation of the spout with respect to the cap:

U.S. Patent No. 6,571,994 B1 to Adams et al.;

U.S. Patent No. 6,702,161 B2 to Adams et al.;

U.S. Patent Application Publication No. 2003/0106911 A1 to Adams et al.; and

U.S. Patent Application Publication No. 2003/0127467 A1 to Adams et al.

Each of the above references utilize the axially-movable stem 81 and not spout 32 to cut or pierce the seal membrane. The above references, however, fail to disclose an overcap including a cutting member depending therefrom, and thus fails to disclose the claimed invention.

9. *U.S. Patent No. 4,967,941 to Beck*

The Beck patent discloses neither a well for a consumable nor a sealing membrane that is opened to release a consumable. Thus, Beck fails to disclose the presently claimed invention.

10. *U.S. Patent No. 2003/0071089 A1 to Ma et al.*

Similarly, the Ma publication does not disclose a well for a consumable or a sealing membrane that is opened to release a consumable. Thus, Ma fails to disclose the presently claimed invention.

CONCLUSION

Applicant believes that the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided below.

The Commissioner is hereby authorized to charge any underpayment of the following fees associated with this communication, including any necessary fees for extension of time and

for the presentation of extra claims, or credit any overpayment to Deposit Account No. 50-2319
(Order No. 463678-00253; Docket No. 33508/US/2/RBC/VEJ).

Prompt and favorable consideration of this PETITION TO MAKE SPECIAL is
respectfully requested.

Respectfully submitted,

DORSEY & WHITNEY LLP

Date: July 14, 2005

By: 

Victor E. Johnson, Reg. No. 41,546

DORSEY & WHITNEY LLP
Suite 1000
555 California Street
San Francisco, California 94104-1513
Telephone: (415) 781-1989 Facsimile: (415) 398-3249